

AMENDED IN ASSEMBLY MARCH 31, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2380**

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**Introduced by Assembly Member Alejo**

February 18, 2016

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An act to add Article 5.8 (commencing with Section 1559.200) to Chapter 3 of Division 2 of the Health and Safety Code, and to amend Section 1170 of the Penal Code, relating to caregivers.

LEGISLATIVE COUNSEL'S DIGEST

AB 2380, as amended, Alejo. Informal caregivers: background checks.

Existing law requires the State Department of Social Services to license and regulate community care facilities, including foster family homes, certified family homes of licensed foster family agencies, and group homes. Existing law requires that persons providing care or services at these homes or facilities obtain either a criminal record clearance or an exemption from disqualification from the department, as prescribed. Under existing law, a violation of these provisions is a crime.

This bill would additionally require an informal caregiver, as defined, to obtain a criminal records clearance or exemption from the department for each adult residing in, or regularly present in, the home, if the caregiver has been designated by a parent who has been convicted of a felony and sentenced to imprisonment for a period of at least one year. *The bill would require the child to be removed from the custody of the caregiver if the caregiver is found to have committed an offense for which a criminal records clearance or exemption may not be issued.* The bill would exempt from these requirements an adult sibling or an

informal caregiver who began caring for the child before January 1, 2017. Because a violation of these requirements would be a crime, this bill would impose a state-mandated local program.

The bill would also require the court, when it sentences a person to a term of imprisonment of one year or more, to inform the person that an informal caregiver designated by the person to care for the person's minor children may be required to obtain a criminal records clearance or exemption from the department.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Article 5.8 (commencing with Section 1559.200)  
2 is added to Chapter 3 of Division 2 of the Health and Safety Code,  
3 to read:

4  
5 Article 5.8. Informal Caregivers  
6

7 1559.200. (a) An informal caregiver shall obtain a criminal  
8 records clearance or exemption *from the State Department of Social*  
9 *Services* for each adult residing in, or regularly present in, the  
10 home, as set forth in Section 1522 of the Health and Safety Code,  
11 if the caregiver has been designated as the caregiver by a parent  
12 who has been convicted of a felony and sentenced to imprisonment  
13 for a period of at least one year.

14 (b) *If the informal caregiver is found to have committed an*  
15 *offense for which the department may not issue a criminal records*  
16 *clearance or exemption, the child shall be removed from the*  
17 *custody of the informal caregiver.*

18 ~~(b)~~

19 (c) This section does not apply to either of the following:

20 (1) An informal caregiver who is an adult sibling of the child.

21 (2) An informal caregiver who began caring for the child before  
22 January 1, 2017.

1     ~~(e)~~

2     ~~(d)~~ For purposes of this section, “informal caregiver” means a  
3 person who has assumed responsibility for the care and custody  
4 of a child, without the involvement of the court, child protective  
5 services agency, or other governmental agency.

6     SEC. 2. Section 1170 of the Penal Code, as amended by Section  
7 2 of Chapter 378 of the Statutes of 2015, is amended to read:

8     1170. (a) (1) The Legislature finds and declares that the  
9 purpose of imprisonment for crime is punishment. This purpose  
10 is best served by terms proportionate to the seriousness of the  
11 offense with provision for uniformity in the sentences of offenders  
12 committing the same offense under similar circumstances. The  
13 Legislature further finds and declares that the elimination of  
14 disparity and the provision of uniformity of sentences can best be  
15 achieved by determinate sentences fixed by statute in proportion  
16 to the seriousness of the offense as determined by the Legislature  
17 to be imposed by the court with specified discretion.

18     (2) Notwithstanding paragraph (1), the Legislature further finds  
19 and declares that programs should be available for inmates,  
20 including, but not limited to, educational programs, that are  
21 designed to prepare nonviolent felony offenders for successful  
22 reentry into the community. The Legislature encourages the  
23 development of policies and programs designed to educate and  
24 rehabilitate nonviolent felony offenders. In implementing this  
25 section, the Department of Corrections and Rehabilitation is  
26 encouraged to give priority enrollment in programs to promote  
27 successful return to the community to an inmate with a short  
28 remaining term of commitment and a release date that would allow  
29 him or her adequate time to complete the program.

30     (3) In any case in which the punishment prescribed by statute  
31 for a person convicted of a public offense is a term of imprisonment  
32 in the state prison, or a term pursuant to subdivision (h), of any  
33 specification of three time periods, the court shall sentence the  
34 defendant to one of the terms of imprisonment specified unless  
35 the convicted person is given any other disposition provided by  
36 law, including a fine, jail, probation, or the suspension of  
37 imposition or execution of sentence or is sentenced pursuant to  
38 subdivision (b) of Section 1168 because he or she had committed  
39 his or her crime prior to July 1, 1977. In sentencing the convicted  
40 person, the court shall apply the sentencing rules of the Judicial

1 Council. The court, unless it determines that there are  
2 circumstances in mitigation of the punishment prescribed, shall  
3 also impose any other term that it is required by law to impose as  
4 an additional term. Nothing in this article shall affect any provision  
5 of law that imposes the death penalty, that authorizes or restricts  
6 the granting of probation or suspending the execution or imposition  
7 of sentence, or expressly provides for imprisonment in the state  
8 prison for life, except as provided in paragraph (2) of subdivision  
9 (d). In any case in which the amount of preimprisonment credit  
10 under Section 2900.5 or any other provision of law is equal to or  
11 exceeds any sentence imposed pursuant to this chapter, except for  
12 a remaining portion of mandatory supervision imposed pursuant  
13 to subparagraph (B) of paragraph (5) of subdivision (h), the entire  
14 sentence shall be deemed to have been served, except for the  
15 remaining period of mandatory supervision, and the defendant  
16 shall not be actually delivered to the custody of the secretary or  
17 the county correctional administrator. The court shall advise the  
18 defendant that he or she shall serve an applicable period of parole,  
19 postrelease community supervision, or mandatory supervision and  
20 order the defendant to report to the parole or probation office  
21 closest to the defendant's last legal residence, unless the in-custody  
22 credits equal the total sentence, including both confinement time  
23 and the period of parole, postrelease community supervision, or  
24 mandatory supervision. The sentence shall be deemed a separate  
25 prior prison term or a sentence of imprisonment in a county jail  
26 under subdivision (h) for purposes of Section 667.5, and a copy  
27 of the judgment and other necessary documentation shall be  
28 forwarded to the secretary.

29 (b) When a judgment of imprisonment is to be imposed and the  
30 statute specifies three possible terms, the court shall order  
31 imposition of the middle term, unless there are circumstances in  
32 aggravation or mitigation of the crime. At least four days prior to  
33 the time set for imposition of judgment, either party or the victim,  
34 or the family of the victim if the victim is deceased, may submit  
35 a statement in aggravation or mitigation to dispute facts in the  
36 record or the probation officer's report, or to present additional  
37 facts. In determining whether there are circumstances that justify  
38 imposition of the upper or lower term, the court may consider the  
39 record in the case, the probation officer's report, other reports,  
40 including reports received pursuant to Section 1203.03, and

1 statements in aggravation or mitigation submitted by the  
2 prosecution, the defendant, or the victim, or the family of the victim  
3 if the victim is deceased, and any further evidence introduced at  
4 the sentencing hearing. The court shall set forth on the record the  
5 facts and reasons for imposing the upper or lower term. The court  
6 may not impose an upper term by using the fact of any  
7 enhancement upon which sentence is imposed under any provision  
8 of law. A term of imprisonment shall not be specified if imposition  
9 of sentence is suspended.

10 (c) (1) The court shall state the reasons for its sentence choice  
11 on the record at the time of sentencing. The court shall also inform  
12 the defendant that as part of the sentence after expiration of the  
13 term he or she may be on parole for a period as provided in Section  
14 3000 or 3000.08 or postrelease community supervision for a period  
15 as provided in Section 3451.

16 (2) When the court sentences a person to a term of imprisonment  
17 of one year or more, it shall inform the person that an informal  
18 caregiver designated by the person to care for the person's minor  
19 child may be subject to the requirements of Section 1559.200 of  
20 the Health and Safety Code.

21 (d) (1) When a defendant subject to this section or subdivision  
22 (b) of Section 1168 has been sentenced to be imprisoned in the  
23 state prison or county jail pursuant to subdivision (h) and has been  
24 committed to the custody of the secretary or the county correctional  
25 administrator, the court may, within 120 days of the date of  
26 commitment on its own motion, or at any time upon the  
27 recommendation of the secretary or the Board of Parole Hearings  
28 in the case of state prison inmates, or the county correctional  
29 administrator in the case of county jail inmates, recall the sentence  
30 and commitment previously ordered and resentence the defendant  
31 in the same manner as if he or she had not previously been  
32 sentenced, provided the new sentence, if any, is no greater than  
33 the initial sentence. The court resentencing under this subdivision  
34 shall apply the sentencing rules of the Judicial Council so as to  
35 eliminate disparity of sentences and to promote uniformity of  
36 sentencing. Credit shall be given for time served.

37 (2) (A) (i) When a defendant who was under 18 years of age  
38 at the time of the commission of the offense for which the  
39 defendant was sentenced to imprisonment for life without the  
40 possibility of parole has served at least 15 years of that sentence,

1 the defendant may submit to the sentencing court a petition for  
2 recall and resentencing.

3 (ii) Notwithstanding clause (i), this paragraph shall not apply  
4 to defendants sentenced to life without parole for an offense where  
5 the defendant tortured, as described in Section 206, his or her  
6 victim or the victim was a public safety official, including any law  
7 enforcement personnel mentioned in Chapter 4.5 (commencing  
8 with Section 830) of Title 3, or any firefighter as described in  
9 Section 245.1, as well as any other officer in any segment of law  
10 enforcement who is employed by the federal government, the state,  
11 or any of its political subdivisions.

12 (B) The defendant shall file the original petition with the  
13 sentencing court. A copy of the petition shall be served on the  
14 agency that prosecuted the case. The petition shall include the  
15 defendant's statement that he or she was under 18 years of age at  
16 the time of the crime and was sentenced to life in prison without  
17 the possibility of parole, the defendant's statement describing his  
18 or her remorse and work towards rehabilitation, and the defendant's  
19 statement that one of the following is true:

20 (i) The defendant was convicted pursuant to felony murder or  
21 aiding and abetting murder provisions of law.

22 (ii) The defendant does not have juvenile felony adjudications  
23 for assault or other felony crimes with a significant potential for  
24 personal harm to victims prior to the offense for which the sentence  
25 is being considered for recall.

26 (iii) The defendant committed the offense with at least one adult  
27 codefendant.

28 (iv) The defendant has performed acts that tend to indicate  
29 rehabilitation or the potential for rehabilitation, including, but not  
30 limited to, availing himself or herself of rehabilitative, educational,  
31 or vocational programs, if those programs have been available at  
32 his or her classification level and facility, using self-study for  
33 self-improvement, or showing evidence of remorse.

34 (C) If any of the information required in subparagraph (B) is  
35 missing from the petition, or if proof of service on the prosecuting  
36 agency is not provided, the court shall return the petition to the  
37 defendant and advise the defendant that the matter cannot be  
38 considered without the missing information.

39 (D) A reply to the petition, if any, shall be filed with the court  
40 within 60 days of the date on which the prosecuting agency was

1 served with the petition, unless a continuance is granted for good  
2 cause.

3 (E) If the court finds by a preponderance of the evidence that  
4 the statements in the petition are true, the court shall hold a hearing  
5 to consider whether to recall the sentence and commitment  
6 previously ordered and to resentence the defendant in the same  
7 manner as if the defendant had not previously been sentenced,  
8 provided that the new sentence, if any, is not greater than the initial  
9 sentence. Victims, or victim family members if the victim is  
10 deceased, shall retain the rights to participate in the hearing.

11 (F) The factors that the court may consider when determining  
12 whether to recall and resentence include, but are not limited to,  
13 the following:

14 (i) The defendant was convicted pursuant to felony murder or  
15 aiding and abetting murder provisions of law.

16 (ii) The defendant does not have juvenile felony adjudications  
17 for assault or other felony crimes with a significant potential for  
18 personal harm to victims prior to the offense for which the sentence  
19 is being considered for recall.

20 (iii) The defendant committed the offense with at least one adult  
21 codefendant.

22 (iv) Prior to the offense for which the sentence is being  
23 considered for recall, the defendant had insufficient adult support  
24 or supervision and had suffered from psychological or physical  
25 trauma, or significant stress.

26 (v) The defendant suffers from cognitive limitations due to  
27 mental illness, developmental disabilities, or other factors that did  
28 not constitute a defense, but influenced the defendant's  
29 involvement in the offense.

30 (vi) The defendant has performed acts that tend to indicate  
31 rehabilitation or the potential for rehabilitation, including, but not  
32 limited to, availing himself or herself of rehabilitative, educational,  
33 or vocational programs, if those programs have been available at  
34 his or her classification level and facility, using self-study for  
35 self-improvement, or showing evidence of remorse.

36 (vii) The defendant has maintained family ties or connections  
37 with others through letter writing, calls, or visits, or has eliminated  
38 contact with individuals outside of prison who are currently  
39 involved with crime.

1 (viii) The defendant has had no disciplinary actions for violent  
2 activities in the last five years in which the defendant was  
3 determined to be the aggressor.

4 (G) The court shall have the discretion to recall the sentence  
5 and commitment previously ordered and to resentence the  
6 defendant in the same manner as if the defendant had not  
7 previously been sentenced, provided that the new sentence, if any,  
8 is not greater than the initial sentence. The discretion of the court  
9 shall be exercised in consideration of the criteria in subparagraph  
10 (B). Victims, or victim family members if the victim is deceased,  
11 shall be notified of the resentencing hearing and shall retain their  
12 rights to participate in the hearing.

13 (H) If the sentence is not recalled, the defendant may submit  
14 another petition for recall and resentencing to the sentencing court  
15 when the defendant has been committed to the custody of the  
16 department for at least 20 years. If recall and resentencing is not  
17 granted under that petition, the defendant may file another petition  
18 after having served 24 years. The final petition may be submitted,  
19 and the response to that petition shall be determined, during the  
20 25th year of the defendant's sentence.

21 (I) In addition to the criteria in subparagraph (F), the court may  
22 consider any other criteria that the court deems relevant to its  
23 decision, so long as the court identifies them on the record,  
24 provides a statement of reasons for adopting them, and states why  
25 the defendant does or does not satisfy the criteria.

26 (J) This subdivision shall have retroactive application.

27 (e) (1) Notwithstanding any other law and consistent with  
28 paragraph (1) of subdivision (a), if the secretary or the Board of  
29 Parole Hearings or both determine that a prisoner satisfies the  
30 criteria set forth in paragraph (2), the secretary or the board may  
31 recommend to the court that the prisoner's sentence be recalled.

32 (2) The court shall have the discretion to resentence or recall if  
33 the court finds that the facts described in subparagraphs (A) and  
34 (B) or subparagraphs (B) and (C) exist:

35 (A) The prisoner is terminally ill with an incurable condition  
36 caused by an illness or disease that would produce death within  
37 six months, as determined by a physician employed by the  
38 department.

39 (B) The conditions under which the prisoner would be released  
40 or receive treatment do not pose a threat to public safety.



1 (C) The prisoner is permanently medically incapacitated with  
2 a medical condition that renders him or her permanently unable  
3 to perform activities of basic daily living, and results in the prisoner  
4 requiring 24-hour total care, including, but not limited to, coma,  
5 persistent vegetative state, brain death, ventilator-dependency, loss  
6 of control of muscular or neurological function, and that  
7 incapacitation did not exist at the time of the original sentencing.

8 The Board of Parole Hearings shall make findings pursuant to  
9 this subdivision before making a recommendation for resentence  
10 or recall to the court. This subdivision does not apply to a prisoner  
11 sentenced to death or a term of life without the possibility of parole.

12 (3) Within 10 days of receipt of a positive recommendation by  
13 the secretary or the board, the court shall hold a hearing to consider  
14 whether the prisoner's sentence should be recalled.

15 (4) Any physician employed by the department who determines  
16 that a prisoner has six months or less to live shall notify the chief  
17 medical officer of the prognosis. If the chief medical officer  
18 concurs with the prognosis, he or she shall notify the warden.  
19 Within 48 hours of receiving notification, the warden or the  
20 warden's representative shall notify the prisoner of the recall and  
21 resentencing procedures, and shall arrange for the prisoner to  
22 designate a family member or other outside agent to be notified  
23 as to the prisoner's medical condition and prognosis, and as to the  
24 recall and resentencing procedures. If the inmate is deemed  
25 mentally unfit, the warden or the warden's representative shall  
26 contact the inmate's emergency contact and provide the information  
27 described in paragraph (2).

28 (5) The warden or the warden's representative shall provide the  
29 prisoner and his or her family member, agent, or emergency  
30 contact, as described in paragraph (4), updated information  
31 throughout the recall and resentencing process with regard to the  
32 prisoner's medical condition and the status of the prisoner's recall  
33 and resentencing proceedings.

34 (6) Notwithstanding any other provisions of this section, the  
35 prisoner or his or her family member or designee may  
36 independently request consideration for recall and resentencing  
37 by contacting the chief medical officer at the prison or the  
38 secretary. Upon receipt of the request, the chief medical officer  
39 and the warden or the warden's representative shall follow the  
40 procedures described in paragraph (4). If the secretary determines

1 that the prisoner satisfies the criteria set forth in paragraph (2), the  
2 secretary or board may recommend to the court that the prisoner's  
3 sentence be recalled. The secretary shall submit a recommendation  
4 for release within 30 days in the case of inmates sentenced to  
5 determinate terms and, in the case of inmates sentenced to  
6 indeterminate terms, the secretary shall make a recommendation  
7 to the Board of Parole Hearings with respect to the inmates who  
8 have applied under this section. The board shall consider this  
9 information and make an independent judgment pursuant to  
10 paragraph (2) and make findings related thereto before rejecting  
11 the request or making a recommendation to the court. This action  
12 shall be taken at the next lawfully noticed board meeting.

13 (7) Any recommendation for recall submitted to the court by  
14 the secretary or the Board of Parole Hearings shall include one or  
15 more medical evaluations, a postrelease plan, and findings pursuant  
16 to paragraph (2).

17 (8) If possible, the matter shall be heard before the same judge  
18 of the court who sentenced the prisoner.

19 (9) If the court grants the recall and resentencing application,  
20 the prisoner shall be released by the department within 48 hours  
21 of receipt of the court's order, unless a longer time period is agreed  
22 to by the inmate. At the time of release, the warden or the warden's  
23 representative shall ensure that the prisoner has each of the  
24 following in his or her possession: a discharge medical summary,  
25 full medical records, state identification, parole or postrelease  
26 community supervision medications, and all property belonging  
27 to the prisoner. After discharge, any additional records shall be  
28 sent to the prisoner's forwarding address.

29 (10) The secretary shall issue a directive to medical and  
30 correctional staff employed by the department that details the  
31 guidelines and procedures for initiating a recall and resentencing  
32 procedure. The directive shall clearly state that any prisoner who  
33 is given a prognosis of six months or less to live is eligible for  
34 recall and resentencing consideration, and that recall and  
35 resentencing procedures shall be initiated upon that prognosis.

36 (11) The provisions of this subdivision shall be available to an  
37 inmate who is sentenced to a county jail pursuant to subdivision  
38 (h). For purposes of those inmates, "secretary" or "warden" shall  
39 mean the county correctional administrator and "chief medical

1 officer” shall mean a physician designated by the county  
2 correctional administrator for this purpose.

3 (f) Notwithstanding any other provision of this section, for  
4 purposes of paragraph (3) of subdivision (h), any allegation that  
5 a defendant is eligible for state prison due to a prior or current  
6 conviction, sentence enhancement, or because he or she is required  
7 to register as a sex offender shall not be subject to dismissal  
8 pursuant to Section 1385.

9 (g) A sentence to state prison for a determinate term for which  
10 only one term is specified, is a sentence to state prison under this  
11 section.

12 (h) (1) Except as provided in paragraph (3), a felony punishable  
13 pursuant to this subdivision where the term is not specified in the  
14 underlying offense shall be punishable by a term of imprisonment  
15 in a county jail for 16 months, or two or three years.

16 (2) Except as provided in paragraph (3), a felony punishable  
17 pursuant to this subdivision shall be punishable by imprisonment  
18 in a county jail for the term described in the underlying offense.

19 (3) Notwithstanding paragraphs (1) and (2), where the defendant  
20 (A) has a prior or current felony conviction for a serious felony  
21 described in subdivision (c) of Section 1192.7 or a prior or current  
22 conviction for a violent felony described in subdivision (c) of  
23 Section 667.5, (B) has a prior felony conviction in another  
24 jurisdiction for an offense that has all the elements of a serious  
25 felony described in subdivision (c) of Section 1192.7 or a violent  
26 felony described in subdivision (c) of Section 667.5, (C) is required  
27 to register as a sex offender pursuant to Chapter 5.5 (commencing  
28 with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime  
29 and as part of the sentence an enhancement pursuant to Section  
30 186.11 is imposed, an executed sentence for a felony punishable  
31 pursuant to this subdivision shall be served in state prison.

32 (4) Nothing in this subdivision shall be construed to prevent  
33 other dispositions authorized by law, including pretrial diversion,  
34 deferred entry of judgment, or an order granting probation pursuant  
35 to Section 1203.1.

36 (5) (A) Unless the court finds, in the interest of justice, that it  
37 is not appropriate in a particular case, the court, when imposing a  
38 sentence pursuant to paragraph (1) or (2), shall suspend execution  
39 of a concluding portion of the term for a period selected at the  
40 court’s discretion.

1 (B) The portion of a defendant's sentenced term that is  
2 suspended pursuant to this paragraph shall be known as mandatory  
3 supervision, and, unless otherwise ordered by the court, shall  
4 commence upon release from physical custody or an alternative  
5 custody program, whichever is later. During the period of  
6 mandatory supervision, the defendant shall be supervised by the  
7 county probation officer in accordance with the terms, conditions,  
8 and procedures generally applicable to persons placed on probation,  
9 for the remaining unserved portion of the sentence imposed by the  
10 court. The period of supervision shall be mandatory, and may not  
11 be earlier terminated except by court order. Any proceeding to  
12 revoke or modify mandatory supervision under this subparagraph  
13 shall be conducted pursuant to either subdivisions (a) and (b) of  
14 Section 1203.2 or Section 1203.3. During the period when the  
15 defendant is under that supervision, unless in actual custody related  
16 to the sentence imposed by the court, the defendant shall be entitled  
17 to only actual time credit against the term of imprisonment imposed  
18 by the court. Any time period which is suspended because a person  
19 has absconded shall not be credited toward the period of  
20 supervision.

21 (6) The sentencing changes made by the act that added this  
22 subdivision shall be applied prospectively to any person sentenced  
23 on or after October 1, 2011.

24 (7) The sentencing changes made to paragraph (5) by the act  
25 that added this paragraph shall become effective and operative on  
26 January 1, 2015, and shall be applied prospectively to any person  
27 sentenced on or after January 1, 2015.

28 (i) This section shall become operative on January 1, 2017.

29 SEC. 3. No reimbursement is required by this act pursuant to  
30 Section 6 of Article XIII B of the California Constitution because  
31 the only costs that may be incurred by a local agency or school  
32 district will be incurred because this act creates a new crime or  
33 infraction, eliminates a crime or infraction, or changes the penalty  
34 for a crime or infraction, within the meaning of Section 17556 of  
35 the Government Code, or changes the definition of a crime within  
36 the meaning of Section 6 of Article XIII B of the California  
37 Constitution.